

Zoning Text Amendment No.: 18-07
Concerning: Accessory Residential
Uses – Accessory
Apartments
Draft No. & Date: 2 – 2/8/18
Introduced: July 17, 2018
Public Hearing:
Adopted:
Effective:
Ordinance No.:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

Lead Sponsors: Councilmembers Floreen and Leventhal, Council President Riemer, and
Councilmember Berliner

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- remove the requirement for conditional use approval for all accessory apartments;
- revise the limited use provisions for attached and detached accessory apartments;
and
- generally amend the provisions for accessory apartments

By amending the following sections of the Montgomery County Zoning Ordinance,
Chapter 59 of the Montgomery County Code:

Division 3.1.	“Use Table”
Section 3.1.6.	“Use Table”
Division 3.3.	“Residential Uses”
Section 3.3.3.	“Accessory Residential Uses”

EXPLANATION: **Boldface** indicates a Heading or a defined term.

Underlining indicates text that is added to existing law by the original text amendment.

[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.

Double underlining indicates text that is added to the text amendment by amendment.

[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.

* * * indicates existing law unaffected by the text amendment.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-3.1 is amended as follows:

Division 3.1. Use Table

* * *

Section 3.1.6. Use Table

The following Use Table identifies uses allowed in each zone. Uses may be modified in Overlay zones under Division 4.9.

USE OR USE GROUP	Definitions and Standards	Ag	Rural Residential				Residential							* * *
							Residential Detached							
		AR	R	RC	RNC	RE-2	RE-2C	RE-1	R-200	R-90	R-60	R-40		
* * *														
Accessory Residential Uses	3.3.3												* * *	
Attached Accessory Apartment	3.3.3.B	L[C]	L[C]	L[C]	L[C]	L[C]	L[C]	L[C]	L[C]	L[C]	L[C]			
Detached Accessory Apartment	3.3.3.C	[C]L	[C]L	[C]L	L	L[C]	L[C]	L[C]						

Key: P = Permitted Use L = Limited Use C = Conditional Use Blank Cell = Use Not Allowed

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Sec. 2. DIVISION 59-3.3 is amended as follows:

Division 3.3. Residential Uses

* * *

Section 3.3.3. Accessory Residential Uses

A. Accessory Apartment, In General

1. Defined, In General

Accessory Apartment means a second dwelling unit that is subordinate to the principal dwelling. An Accessory Apartment includes an Attached Accessory Apartment and a Detached Accessory Apartment.

2. Use Standards for all Accessory Apartments

- [a.] Where an Accessory Apartment is allowed as a limited use, it must satisfy the following standards:
- [i]a. Only one Accessory Apartment is permitted for each lot.
 - [ii]b. The Accessory Apartment was approved as a conditional use before May 20, 2013 and satisfies the conditions of the conditional use approval; or
 - [iii]c. The Accessory Apartment is licensed by the Department of Housing and Community Affairs under Chapter 29 (Section 29-19); and
- [(a)]i. the apartment has the same street address as the principal dwelling;
 - [(b)]ii. either:
 - (a) one on-site parking space is provided in addition to any required on-site parking space for the principal dwelling; however, if a new driveway must be constructed for the Accessory Apartment, then 2 on-site parking spaces must be provided; or
 - (b) the Hearing Examiner finds under the waiver in Section 29-26(b) that there is adequate on-street parking;
 - [(c)]iii. the maximum gross floor area for an Accessory Apartment, including any floor area used for an Accessory Apartment in a cellar, must be less than 50% of the total floor area in the principal dwelling, including any floor area used for an Accessory Apartment in the cellar of the

principal dwelling, or 1,200 square feet, whichever is less;

[(d)]iv. the maximum floor area used for an Accessory Apartment in a proposed addition to the principal dwelling must not be more than 800 square feet if the proposed addition increases the footprint of the principal dwelling; and

[(e)]v. the maximum number of occupants is limited by Chapter 26 (Section 26-5); however, the total number of occupants residing in the Accessory Apartment who are 18 years or older is limited to 2.

[iv]d. An Accessory Apartment must not be located on a lot where any other allowed rental Residential use exists; however, an Accessory Apartment may be located on a lot in an Agricultural or Rural Residential zone that includes a Farm Labor Housing Unit or a Guest House.

[v]e. In the Agricultural and Rural Residential zones, an Accessory Apartment is excluded from any density calculations. If the property associated with an Accessory Apartment is subsequently subdivided, the Accessory Apartment is included in the density calculations.

[vi]f. Screening under Division 6.5 is not required.

[vii]g. In the AR zone, [this use] any accessory apartment may be prohibited under Section 3.1.5, Transferable Development Rights.

- [b. An Accessory Apartment conditional use waiver application may be filed with the Hearing Examiner to deviate from the following limited use standards:

 - i. the number of on-site parking spaces; or
 - ii. the minimum distance from any other Attached or Detached Accessory Apartment].
- [c. Where an Accessory Apartment conditional use application is filed under Section 3.3.3.A.2.b, the Hearing Examiner may approve a conditional use for the Accessory Apartment under Section 7.3.1, except that the findings under Section 7.3.1.E are not applicable to this type of conditional use. The limited use standards of Section 3.3.3.A.2.a and Section 3.3.3.A.2.c apply to all accessory apartment conditional use applications. In addition, the limited use standards of Section 3.3.3.B.2 apply to Attached Accessory Apartment applications, and the limited use standards of Section 3.3.3.C.2.a apply to Detached Accessory Apartment applications.

 - i. Fewer off-street spaces are allowed if there is adequate on-street parking. On-street parking is inadequate if:
 - (a) the available on-street parking for residents within 300 feet of the proposed Accessory Apartment would not permit a resident to park on-street near his or her residence on a regular basis; and
 - (b) the proposed Accessory Apartment is likely to reduce the available on-street parking within 300 feet of the proposed Accessory Apartment.

- ii. When considered in combination with other existing or approved Accessory Apartments, the deviation in distance separation does not result in an excessive concentration of similar uses, including other conditional uses, in the general neighborhood of the proposed use.]

B. Attached Accessory Apartment

1. Defined

Attached Accessory Apartment means a second dwelling unit that is part of a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. An Attached Accessory Apartment is subordinate to the principal dwelling.

2. Use Standards

Where an Attached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:

- a. A separate entrance is located:
 - i. on the side or rear of the dwelling;
 - ii. at the front of the principal dwelling, if the entrance existed before May 20, 2013; or
 - iii. at the front of the principal dwelling, if it is a single entrance door for use of the principal dwelling and the Attached Accessory Apartment.
- b. The detached house in which the Accessory Apartment is to be created or to which it is to be added must be at least 5 years old on the date of application for a license [or a conditional use].
- c. In the RE-2, RE-2C, RE-1, and R-200 zones, the Attached Accessory Apartment is located at least 500 feet from any other

Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

d. In the RNC, R-90, and R-60 zones, the Attached Accessory Apartment is located at least 300 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

e. Under Section 29-26(b), the Hearing Examiner may grant a waiver from the parking and distance separation standards.

C. Detached Accessory Apartment

1. Defined

Detached Accessory Apartment means a second dwelling unit that is located in a separate accessory structure on the same lot as a detached house building type and includes facilities for cooking, eating, sanitation, and sleeping. A Detached Accessory Apartment is subordinate to the principal dwelling.

2. Use Standards

[a.] Where a Detached Accessory Apartment is allowed as a limited use, it must satisfy the use standards for all Accessory Apartments under Section 3.3.3.A.2 and the following standards:

[i]a. In the RE-2, RE-2C, and RE-1 zones, the Detached Accessory Apartment [is] must be located a minimum distance of 500 feet from any other Attached or Detached Accessory Apartment, measured in a line from side lot line to side lot line along the same block face.

[ii]b. A Detached Accessory Apartment built after May 30, 2012 must have the same minimum side setback as the

principal dwelling and a minimum rear setback of 12 feet, unless more restrictive accessory building or structure setback standards are required under Article 59-4.

[iii]c. The minimum lot area is one acre.

[b. Where a Detached Accessory Apartment is allowed only as a conditional use, it may be permitted by the Hearing Examiner under all limited use standards and Section 7.3.1, Conditional Use].

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Sec. 3. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

Megan Davey Limarzi, Esq.
Clerk of the Council